

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE for A-5-MDR-01- 14

LOCAL GOVERNMENT: County of Los Angeles

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-MDR-01-014

APPLICANT: Marina Two Holding Partnership

PROJECT LOCATION: 13900 Marquesas Way (Parcel 12) & 4242 Via Marina (Parcel 15), Marina Del Rey, County of Los Angeles

PROJECT DESCRIPTION: Parcel 12: Demolition of 120 residential units, 5,600 square feet of commercial office space; removal of 464 boat slips and construction of a 437-unit apartment complex including 35 very low-income senior citizen units; 2,000 square feet of visitor-serving commercial space; and 227 boat slips, and 969 parking space garage;

Parcel 15: Demolition of 288 residential units, 4,400 square feet of restaurant space; removal of 253 boat slips, and construction of a 585-apartment complex including 47 very low-income senior citizen units; 8,000 square feet of visitor-serving commercial space; and 227 boat slips, and 1,271 parking space garage.

Note: All waterside development (i.e. boat slips) is located within the Commission's original permit jurisdiction. Coastal permit authority within this area is solely with the Commission. The County included the boat slips in the description because the development was proposed as one development and the County concurrently issued other discretionary approvals. A separate application for the removal of the existing boat slips and construction of new slips will be required to be submitted to the Commission.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the appeal has been filed because the project approved by the County is consistent with Coastal Act policies regarding public access and with the County's certified Local Coastal Plan.

APPELLANTS: California Coastal Commissioners Sara Wan & Shirley Dettloff; Fairwind Yacht Club; David DeLange and David Thompson, Coalition to Save the Marina; and John Davis, Coalition to Save the Marina.

SUBSTANTIVE FILE DOCUMENTS:

1. Marina Del Rey certified Local Coastal Plan, 1995.

I. APPEAL PROCEDURES

After certification of a local coastal program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

The current version of the County of Los Angeles' Marina Del Rey LCP was certified on May 10, 1995. The County approval of the proposed project is appealable because the project is located between the sea and the first public road paralleling the sea and is also located within tidelands.

Section 30603(a) of the Coastal Act identifies which types of development are appealable. Section 30603(a) states, in part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
 - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
 - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

The grounds for appeal of an approved local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If the Commission finds that a substantial issue is raised by the appeal, the de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

At the hearing on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

II. APPELLANTS' CONTENTIONS

The County approval of the proposed development was appealed on January 12, 2001, by the California Coastal Commissioners Sara Wan and Shirley Dettloff. Subsequently, three additional appeals were received. The three additional appellants are Fairwind Yacht Club; David DeLange and David Thompson with the Coalition to Save the Marina Inc.; and John Davis with the Coalition to Save the Marina Inc. The appellants contend that the proposed development is not consistent with the access policies of the Coastal Act and does not conform to the requirements of the Local Coastal Program (see Exhibit No. 8 –11 for the submitted appeals).

The appeal by the California Coastal Commission contends that:

1. The certified LCP requires that new development provide view corridors with unobstructed views from adjacent public streets to the harbor. The LCP requires a minimum of 20% of the parcel's frontage to be available as a view corridor. Increased view corridors are required with each foot above the designated minimum height limit. In this particular case, since the project is exceeding the height limit a view corridor of 33% is required. Based on the County's submitted record for the County permit, the development will provide a 20% view corridor, as measured perpendicular to the frontage road. According to the County, with design modifications to the buildings, the project will provide additional angular views from the street to the water, which combined with the perpendicular measured views, the view corridor will total in excess of 33% for each parcel. The amount of credit the development received for the angular views was based on discretionary design criteria by County staff.

The LCP view policy states that views be maintained and enhanced as a priority goal of the plan. Based on the County's record it can not be determined at this time that the angular views and the County's calculations for determining the amount of credit the development received for the angular views is comparable to straight perpendicular views and will provide the public adequate view corridors from the frontage road.

The appeal by Fairwind Yacht Club contends:

1. The project will reduce the number of slips available to middle and lower income boaters. A survey of slip vacancies in Marina Del Rey (dated December 20, 2000) is attached. It shows that there are very few slips available for rent. Eliminating many, small slips for fewer, larger slips will reduce the public's access to recreational boating.

The appeal by David DeLange and David Thompson, Coalition to Save the Marina Inc., contends:

1. Inconsistent with Coastal Act Sections 30612.
2. Inconsistent with Goals 34, 37, 39, and 42 of the Los Angeles County General Plan. Inconsistent with several provisions of the Marina Del Rey LCP that implement the aforesaid sections and goals.

The appeal by John Davis, Coalition to Save the Marina Inc., contends:

1. Non-compliance with Coastal Act Sections 3007. The applicant is not providing housing for low and moderate-income families but only low to moderate Senior housing;

2. The LCP requires that the existing structure be either economically or physically obsolete neither of which is the case with this development.
3. Non-compliance with Coastal Act Section 30006. The public was excluded from commenting upon evidence the Planning Commission considered in making their decision.
4. Non-compliance with Coastal Act Section 3006.5 [30006.5]
5. Non-compliance with Coastal Act Section 30253.
6. Non-compliance with Coastal Act Section 30105.5
7. Non-compliance with Coastal Act Section 30220

III. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **no substantial issue exists** with respect to the County's approval of the project with the provisions of the public access policies of the Coastal Act, or the standards set forth in the certified Local Coastal Program, pursuant to Public Resources Code Section 30625(b)(1).

MOTION: Staff recommends a **Yes** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-PDR-01-014 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Area History

The applicant proposes a two-phased development project, as follows: (Phase I) Parcel 12: Demolition of 120 residential units, 5,600 square feet of commercial office space; removal of 464 boat slips and construction of a 437-unit apartment complex including 35 very low-income senior citizen units; 2,000 square feet of visitor-serving commercial space; and 227 boat slips, and 969 parking space garage. (Phase II) Parcel 15: Demolition of 288 residential units, 4,400 square feet of restaurant space; removal of 253 boat slips, and construction of a 585-apartment complex including 47 very low-income senior citizen units; 8,000 square feet of visitor-serving commercial space; and 227 boat slips, and 1,271 parking space garage.

Parcels 12 is located on Marquesas Way mole road. The parcel extends partially along the south side of Marquesas Way to the eastern end of the road (see Exhibit No. 2). Parcel 15 is located partially along Via Marina and extends to the east along the southern side of the Panay Way mole road (see Exhibit No. 2). Both parcels are situated in the western portion of the marina, in Marina Del Rey.

B. Areawide Description

Marina Del Rey covers approximately 807 acres of land and water in the County of Los Angeles (see Exhibit No. 1-3). Marina Del Rey is located between the coastal communities of Venice and Playa Del Rey. The Marina is owned by the County and operated by the Department of Beaches and Harbors.

The existing Marina began its development in 1962 when the dredging of the inland basin was completed. The primary use of the Marina is recreational boating. The marina provides approximately 5,923 boating berths. Other boating facilities include transient docks, a public launching ramp, repair yards, charter and rental boats, harbor tours, and sailing instructions.

Other recreational facilities include: Burton W. Chase Park, Admiralty Park, a public beach and picnic area, bicycle trail, and limited pedestrian access along the marina bulkheads and north jetty promenade.

Along with the recreational facilities the Marina is developed with multi-family residential projects, hotels, restaurants, commercial, retail and office development.

Within the Marina, most structural improvements have been made by private entrepreneurs, operating under long-term land leases. These leases were awarded by open competitive bids in the early and mid 1960's. The developers were required to construct improvements on

unimproved parcels in conformance with authorized uses designated in their leases and pursuant to a master plan for the Marina. Most leases will expire after 2020.

Within the existing Marina development has basically occurred on all leasehold parcels. This development is generally referred to as Phase I development. Recycling, intensification, or conversion of these initial uses on leased parcels is referred to as Phase II development.

C. Local Coastal Program Background

In 1984, the Commission certified the County's Land Use Plan portion of the Marina Del Rey/Ballona segment of the County of Los Angeles Local Coastal Program. Subsequent to the Commission's certification, the City of Los Angeles annexed over 525 acres of undeveloped land, which was a portion of the County's LCP area located south of Ballona Creek and east of Lincoln Boulevard (known as Area B and C). Subsequent to the City's annexation, the City submitted the identical Land Use Plan (the Playa Vista segment of the City's Local Coastal Program) covering the City's portion of the original County LCP area. The Commission certified the LCP for the annexed area with suggested modifications on December 9, 1986. The County also resubmitted those portions of their previously certified LUP that applied to areas still under County jurisdiction, including the area known as Area "A", and the existing Marina. The Commission certified the County of Los Angeles' revised Marina Del Rey land Use Plan on December 9, 1986.

On September 12, 1990, the Commission certified, with suggested modifications, an Implementation Program pertaining to the existing marina. The undeveloped area in the County, Playa Vista Area "A" was segmented from the marina and no ordinances were certified for the area. After accepting the suggested modifications, the Commission effectively certified the Marina Del Rey LCP and the County assumed permit issuing authority.

In 1994, the County submitted an amendment to the LCP. In May 1995, the Commission certified the LCPA with suggested modifications. The County accepted the modifications and the amended LCP was effectively certified.

D. DESCRIPTION OF LOCAL APPROVAL

On December 6, 2000, the County of Los Angeles Regional Planning Commission approved coastal development permit No. 98-134-(4), with conditions. The permit is for land-side redevelopment on Parcels 12 and 15 (see County permit, Exhibit No. x).

The action by the Planning Commission was appealable to the County's Board of Supervisors. However, no appeals were filed with the Board and notice of the County's final action was received by the Coastal Commission's South Coast District office on January 2, 2001.

E. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(a)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

1. Coastal Commission appeal

The appeal by the Coastal Commission contends that the County's methodology used in determining the required view corridor, which incorporates and credits angular views from the street may not be comparable with views measured perpendicular from the street and inconsistent with the policies of the LCP. As designed, the County approved view corridor may not protect public views from adjacent public roads.

The certified LCP requires that new development on mole roads and along Via Marina provide view corridors from adjacent public streets. Section 22.46.1060(E)(2) of the LCP states:

View Corridor Requirements. Parcels located between the water and the first public road shall provide a view corridor allowing uninterrupted views of the harbor from the road to the waterside, at ground level. The design, location and feasibility of view corridors shall be determined by the Director and shall be based on the distance from the first public road to the bulkhead, the parcel's land use category, configuration and the intensity of development allowed by the Specific Plan.

a. Where a view corridor is physically feasible, the optimum width of such a view corridor shall be a minimum of 20 percent of the water frontage of the site.

b. Where the Director finds an alternate method for providing a view corridor, the Director may apply credit toward the view corridor percentage standards.

c. Where the Director finds that a view corridor cannot be physically located anywhere on the parcel to provide a view of the harbor from the road, the Director may waive the requirement.

3. View Corridor Standards. View corridors shall be maintained so as to provide an unobstructed view of the bulkhead edge, masts and horizon for pedestrians and passing motorists. Unobstructed views are defined as views with no inhibition of visual access to the water. Parking lots may be depressed below grade such that views are possible over parked vehicles; the Director shall determine whether a parking lot designed as such warrants credit toward the view corridor requirement. A depression of two feet below grade shall be the minimum considered for view corridor credit through a parking lot. Additionally, landscaping shall be placed and maintained so as

not to obstruct water views. Where the Director finds that such combination is appropriate, view corridors shall be combined with vertical accessways.

In the County's design guidelines in the Implementing Ordinance of the LCP, Section 22.46.160 (5)(c) states that building heights shall be restricted according to the following:

Forty-five (45) foot maximum when a 20% view corridor is provided ranging to a seventy-five (75) foot maximum when a 40% view corridor is provided. Height above 45 feet shall be permitted at the ratio of 1.5 feet in height for every 1% view corridor exceeding the 20%.

The intent of the view corridor requirement is to provide increased public views from the adjacent public road on parcels that are proposed for development or redevelopment. The proposed project consists of two separate parcels: Parcel 12 and 15 (see Exhibit No. 2). The two parcels have frontage along two different mole roads (Marqueseas and Panay Way) and parcel 15 also fronts on Via Marina.

Both parcels are currently developed. Parcel 12 is developed with 120 residential apartments, two commercial structures totaling 5,600 square feet of office space, and a surface parking lot. There is no visitor serving uses on the landside portion of the site. Parcel 12 has a 45-foot maximum height limit along the end of the mole road. However, the County granted a 10-foot height limit for the provision of low income senior citizen housing on that portion of the parcel. The "view corridor incentive" does not apply to the ends of the mole roads.

Parcel 15 is developed with 288 residential apartments, and a 4,400 square foot visitor-serving commercial building. Because of the existing buildings the two parcels do not offer substantial public views from the street, except on a portion of parcel 12 where there is a surface parking lot. Parcel 15 has a building height limit of 45 feet and is allowed to extend to a maximum of 75 feet with expanded view corridors.

The view corridor policies of the LCP provide the Director substantial discretion in determining the appropriate view corridor design on a case by case basis for new development. The LCP requires a minimum of 20% of the parcel's water frontage to be available as a view corridor. For each 1.5 feet above the designated minimum height limit an increased view corridor of 1% is required. In this particular case, since the project is exceeding the 45-foot height limit by 10.5 to 19.5 feet, a view corridor of approximately 33% is required.

Based on the County's submitted record for the County issued permit, parcel 12 has approximately 830 linear feet of frontage parallel to the seawall. Parcel 15 has approximately 1,650 feet of frontage. A view corridor of 20% would require 166 linear feet on Parcel 12 and 330 linear feet for Parcel 15. According to the record Parcel 12 is providing 173 linear feet or a 21% view corridor based on a conventional view corridor calculation that considers views that are measured perpendicular from the bulkhead to the

street. Similarly, parcel 15 is providing 332 linear feet or a 20% view corridor based on the conventional view corridor calculations.

With the increase in height above 45 feet, an additional 100 linear feet is required for a total of 266 feet on parcel 12 and an additional 215 linear feet is required for a total of 545 feet on Parcel 15. Using this calculation the proposed project is deficient 93 feet or 35% of the view corridor requirement. Parcel 15 is deficient 213 linear feet or 40% of the view corridor requirement.

However, the approved development incorporated a view corridor design with angular views from the roadway that maintained the 20% perpendicular view width at the street and flared out at the bulkhead (see Exhibit No. 5 & 6). The development was credited for the increased viewable water frontage created by these angular views. The County used this alternative view corridor methodology, based on the discretion provided in the LCP. The County's Director determined that partial credit should be given to the applicant for additional frontage created by the angular views that provides views to the bulkhead from the street. The County found that angled views, in this particular case, provides additional views, but such views are not comparable to the conventional perpendicular views and the applicant should not receive full credit for such views. Therefore, the County allowed partial credit based on the severity of the angle of the view from the street. Views less than 90-degrees were discounted by the average angle the view varied from 90 degrees since views would be available along the entire length of the base of the angle (see Exhibit No. 7). For example, on Parcel 15, View Corridor "A" (Exhibit No. 6): a view angle between 90 and 75.2 degrees, as measured from the right angle of the street, would provide an average view of 82.6 degrees $[(75.2 \text{ degrees} + 90 \text{ degrees}) / 2]$. Since 82.6 degrees is 91.8 percent of the full credit given for right angle views, the additional linear footage provided within this 75.2 degree view angle would be credited with 91.8 percent of the linear footage within the angle. Views providing no less than 22.5-degrees were given 25% credit.

The County determined that this methodology was appropriate for this project to avoid the rectilinear building layout found in many of the existing developments, which contributes to a "tunnel vision". The LCP indicates that existing buildings are designed as low-rise rectilinear buildings that occupy most of the linear frontage along the bulkhead. The articulated design of the proposed development allows for broader or expanded views of the harbor and bulkhead edge by providing angled views in addition to perpendicular views.

Based on the County's methodology parcel 12 provides an additional 244.51 linear feet of angled views for a total of 417.51 linear feet or 157% of the required view corridor. Parcel 15 provides an additional 321.23 linear feet of angled views for a total of 653.23 linear feet or 197% of the required view corridor.

Although the County's methodology for calculating the view corridor is not based on what may be considered conventional calculations for view corridors, the LCP allows the County

discretion or flexibility in designing view corridors. The angled views increase the amount of bulkhead frontage available to the public from the street frontage and will enhance the opportunities for the public to enjoy the visual elements of the harbor. Moreover, the design allows articulation in the design of the buildings, which eliminates rectilinear buildings and contributes to the visual quality of the area and eliminates narrow view corridors.

Moreover, along Via Marina, which is designated as a Scenic Road in the LCP and is the major access road through the marina, the development on Parcel 15 provides two 88 foot wide view corridors plus a smaller 20 foot wide corridor along the side of the parcel (see Exhibit No. 6). The perpendicular views along Via Marina have been maximized with angular views limited to a minimal amount as compared to the larger angular views provided along the mole road. The view corridors created by perpendicular views along Via Marina total 197 linear feet or 32% of the 600 feet of water frontage along Via Marina. Angular views total approximately 93 linear feet or 15 % of the total view corridor provided along Via Marina.

To ensure that these view corridors are not obstructed by landscaping or other development, the County has conditioned the permit to ensure that view corridors are maintained so as to provide unobstructed views of the bulkhead edge, masts and horizon for pedestrians and passing motorists. The County will require that the permit and conditions be incorporated into the applicants parcel lease with the County.

Moreover, the existing development does not currently provide public access along the bulkhead. The proposed development on parcel 12 and parcel 15 is designed with a 28-foot public pedestrian walkway along the entire length of the parcels' bulkhead which measures a total of 2,480 linear feet (830 feet on parcel 12 and 1,650 feet on parcel 15). This pedestrian access will allow greater pedestrian view opportunities in addition to the view corridors from the street.

The LCP view policy states that views be maintained and enhanced as a priority goal of the plan and allows the County the discretion to determine if view corridors are physically feasible and practical for each parcel. The Commission concurs with the County's analysis and finds that the approved project, as conditioned, will enhance public views and is consistent with the view policies of the certified LCP. Therefore, the proposed project does not raise a substantial issue with respect to views.

2. The appeal by Fairwind Yacht Club contends:

The project will reduce the number of slips available to middle and lower income boaters. A survey of slip vacancies in Marina Del Rey (dated December 20, 2000) is attached. It shows that there are very few slips available for rent. Eliminating many, small slips for fewer, larger slips will reduce the public's access to recreational boating.

All waterside development (i.e. boat slips) is located within the Commission's original permit jurisdiction. Coastal permit authority within this area is solely with the Commission. The County included the boat slips in the description because the development was proposed as one development and the County concurrently issued other discretionary approvals. However, the County did not issue a Coastal development permit for removal or replacement of boat slips. A separate application for a coastal development permit for the demolition and reconstruction of the boat slips will be required to be submitted to the Commission. The issue of the reduction in slips and impacts to public access will be addressed at that time. Therefore, the appellant's contention does not raise a valid ground for appeal with respect with the standards of the LCP or the access policies of the Coastal Act.

3. The appeal by David De Lange, Coalition to Save the Marina Inc. contends:

- a. Inconsistent with Section 30612 of the Coastal Act.

Section 30612 of the Coastal Act states:

An application for a coastal development permit to demolish a structure shall not be denied unless the agency authorized to issue that permit, or the commission, on appeal, where appeal is authorized by this division, finds, based on a preponderance of the evidence, that retention of that structure is feasible.

The appellant is asserting that Section 30612 prohibits the demolition of buildings unless a finding is made that retention of that structure is not feasible. However, Section 30612 limits the Coastal Commission's power to deny demolitions. It does not impose any standards for approval of demolition of a structure, thus, Section 30612 does not apply to this project. The Commission has consistently allowed demolition of structures unless it was found that demolition would have an adverse impact on coastal resources. Furthermore, this Section is not a Chapter three policy of the Coastal Act and is not required to be implemented in the LCP. This contention does not address standards of the LCP or the public access policies of the Coastal Act. Therefore, the appellant's contention does not raise a valid ground for appeal with respect with the standards of the LCP or the access policies of the Coastal Act.

- b. Inconsistent with Goals 34, 37, 39, and 42 of the Los Angeles County General Plan. Inconsistent with several provisions of the Marina Del Rey LCP that implement the aforesaid sections and goals. The LUP states:

Phase I development of the Marina is now complete. This LCP presents the next phase of development (Phase II) for the Marina in which existing uses may be recycled or intensified, and new uses may be created. The Land Use Plan for the LCP is based on the need for making necessary changes and improvements in land uses to ensure that recreational boating, visitor-serving accommodations, and other recreational and commercial facilities are made available to the public on an orderly basis. Consequently, the significant reasons for change and expansion of the existing Marina include:

Implementing objectives of the California Coastal Act...

Based on the above the development does not conform to the standards set forth in the certified local coastal program.

This contention addresses inconsistencies with the County's General Plan and goals that are not part of the County's LCP. This contention does not address standards of the LCP or the public access policies of the Coastal Act. Furthermore, in certifying the County's LCP the Commission found the Plan consistent with the policies of the Coastal Act. As explained above, the permit approved by the County does not affect recreational facilities, or visitor-serving accommodations. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

4. The appeal by John Davis, Coalition to Save the Marina Inc., contends:

- a. Non-compliance with Coastal Act Sections 3007 [actual reference should be 30007]. The applicant is not providing housing for low and moderate-income families but only low to moderate Senior housing.

Section 30007 of the Coastal Act states:

Nothing in this division shall exempt local governments from meeting the requirements of state and federal law with respect to providing low-and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any law hereafter enacted.

The development will provide 82 units for very low-income senior citizen housing. The County has granted height and density incentives for that purpose. Section 30007 does not impose any new standards or requirements with respect to housing. The LCP encourages affordable and senior citizen housing, however, the provision of low and moderate income housing is not a requirement of the Coastal Act. The type of affordable housing provided within a proposed development is not a mandatory requirement of the LCP and is regulated by the California Department of Housing and Urban Development. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP.

- b. The LCP requires that the existing structure be either economically or physically obsolete neither of which is the case with this development.

This contention addresses Coastal Act Section 30612 and is discussed above.

- c. Non-compliance with Coastal Act Section 30006. The public was excluded from commenting upon evidence the Planning Commission considered in making their decision and the soil testing results in the draft EIR is fraudulent.

Section 30006 states:

The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

The appellant is asserting that new evidence was submitted to the Planning Commission after the close of the Public Hearing regarding soil toxicity tests. As a result the public was excluded from commenting upon evidence the Planning Commission considered in making their decision.

The LCP requires that the County conduct public hearings for coastal development permits. The County conducted approximately four separate public hearings on this project and received public testimony. The County's record indicates that soil toxicity was addressed in the EIR and during the Commission hearing.

In terms of fraudulent soil analysis in the draft EIR, the County's Department of Public Works reviewed this section of the draft EIR and addressed this contention during their review process. The County determined that, although a test sample page for another project was included in the Appendices of the EIR, none of the data contained in that sample was used in the analysis for the subject project. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP.

d. Non-compliance with Coastal Act Section 3006.5 [30006.5]

Section 3006.5 [30006.5] states:

The Legislature further finds and declares that sound and timely scientific recommendations are necessary for many coastal planning, conservation, and development decisions and that the commission should, in addition to developing its own expertise in significant applicable fields of science, interact with members of the scientific and academic communities in the social, physical, and natural sciences so that the commission may receive technical advice and recommendations with regard to its decision making, especially with regard to issues such as coastal erosion and geology, marine biodiversity, wetland restoration, the question of sea level rise, desalination plants, and the cumulative impact of coastal zone developments.

This contention does not address standards of the LCP or the public access policies of the Coastal Act. Furthermore, in certifying the County's LCP the Commission found the Plan consistent with the policies of the Coastal Act. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

e. Non-compliance with Coastal Act Section 30253.

Section 30253 of the Coastal Act states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The appellant contends that the area is geologically hazardous area and the County did not analyze all available information regarding hazards including the postulated Lincoln Boulevard fault.

The LCP states that no potentially active earthquake fault traverses the marina, however, potential geologic hazards could result from seismic activity in surrounding areas. Hazards include ground shaking and liquefaction. Section 22.46.1180 (A)(4) requires that all new development over three stories be designed to withstand a seismic event with a ground acceleration of no less than 0.5 g. To address these potential hazards the County requires site specific geologic and soils studies including specific geotechnical studies related to mitigation of liquefaction and lateral spreading. Furthermore, all development is required to utilize earthquake-resistant construction. The studies used for this development used a ground acceleration of 0.5g, consistent with the LCP requirement.

A geotechnical report has been prepared for the site, by Law/Crandall (2/17/00) and is part of the EIR and the County's submitted record. The report addresses the potential hazards, including the presence of faults, earthshaking and liquefaction, and makes recommendations to mitigate all potential geologic hazards. The geotechnical report in the EIR addressed the postulated or "Proposed" Lincoln Boulevard Fault and did additional analysis to further evaluate the existence of such a fault. Based on the results of the analysis it was indicated that there is no fault in this area that has ruptured the ground surface in at least the past several tens to hundred thousand years. Furthermore, as stated in the EIR and in a response by the County's Department of Public Works, the Lincoln Boulevard Fault is not shown on any current seismic safety element maps, nor is it shown on the State Alquist Priolo hazard maps.

The report concludes that construction of the proposed project is feasible from a geotechnical engineering standpoint provided the recommendations are incorporated into the design plans. The County incorporated conditions into the permit to ensure that the project conformed with the recommendations of the report and with County requirements.

Therefore, the potential hazards of the site have been addressed and mitigation required consistent with the policies of the LCP. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP.

f. Non-conformance with Section 30105.5 of the Coastal Act.

Section 30105.5 of the Coastal Act states:

"Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The certified LCP has cumulative impact requirements. The cumulative impact of the project was addressed in the EIR which was accepted by the County. The appellant asserts that the Planning Commission must consider all of the proposed and existing projects in the area as they relate to geologic safety, wind shadows affecting sailors, open space, pollution, and wildlife (the marina contains an Environmentally Sensitive Habitat Area in Area A). The applicant also asserts that the applicant has not proved that there are available volumes of water to support the proposal.

Section 30105.5 is a Coastal Act definition and does not impose any limitations or restrictions on development. It is not a standard of the LCP. The cumulative impact of development within the Marina was addressed in the certified LCP and in the draft EIR, with respect to the appellant's issues. Section 30250 (a) of the Coastal Act states that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

In certifying the County's LCP, the Commission found the LCP consistent with Section 30250. The certified LCP contains policies and standards of development applicable to redevelopment, renovation, and intensification of the development within the marina. The County, in its findings found the proposed project consistent with the policies and standards of the certified LCP.

The appellant's contention regarding volumes of water is unclear. In terms of utilities, there is existing infrastructure to support the proposed development. In the certified LCP the County recognizes that the capacity of the existing water supply system needs to be upgraded and that expansion is taking place. In approving the proposed project the County found the capacity of the water system adequate to support the development. However, this does not address standards of the LCP or the public access policies of the Coastal Act. In terms of water area and its ability to support boatslips, the waterside development is not part of this permit and the applicant will have an opportunity to address the waterside development when it is before the Commission.

Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- g. Non-conformance with Section 30220 of the Coastal Act.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

The County's certified LCP allows for a mix of water-oriented recreational uses, residential, and commercial development. The existing sites are designated for residential use and the applicant is providing a public promenade around the entire bulkhead frontage for public recreation. The proposed development is consistent with the permitted uses for this area and with the relevant policies of the LCP. This contention does not address standards of the LCP or the public access policies of the Coastal Act. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- h. The applicant proposes to use the automobile trip allocations reserved for the boating public and to transfer them to the residential project.

The proposed development does not propose to use boating vehicle trip allocations for the landside development. The County analyzed boater vehicle trips and landside development vehicle trips separately and imposed trip mitigation fees accordingly. Furthermore, the waterside development (i.e. boatslips) is not part of the County's coastal development permit. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- i. The applicant has maintained the anchorage in an unsafe condition.

This issue is a local public safety issue concerning the current state of the existing anchorage. This contention does not address the proposed development. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- j. The addition of additional 2,420 dwelling units would contradict the primary purpose of the small craft harbor.

The applicant is demolishing 408 units and constructing 1,022 new units for a net gain of 614. Multiple-family residential use is a permit use in the certified LCP. The County's certified LCP allows for a mix of water-oriented recreational uses, residential, and commercial development. The LCP also limits the amount of development in the marina and limits the number of vehicle trips within each development zone. The number of units proposed is within the LCP's allowable development potential for this area of the Marina. In this

contention, the appellant has not raised a question of conformance with the LCP or with the access policies of the Coastal Act. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- k. The removal and reduction of the number of boat slips and related parking requires an amendment to the Local Coastal program.

The existing development provides parking in support of the existing boat slips. The new development will also provide parking, above the minimum County parking requirements, to support the new boat slips. All waterside development (i.e. boat slips) is located within the Commission's original permit jurisdiction. Coastal permit authority within this area is solely with the Commission. The County included the boat slips in the description because the development was proposed as one development and the County concurrently issued other discretionary approvals. A separate application for the boat slips will be required to be submitted to the Commission. The appellant can raise this issue when an application for the boat slips is submitted. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- l. The applicant has conducted development without a Coastal Development Permit.

The appellant has not provided any information to support this contention. Furthermore, the existence of unpermitted development is not relevant to the proposed development's consistency with the standards of the LCP or the public access policies of the Coastal Act. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

- m. The applicant has submerged structures in the harbor next to parcel FF.

This contention does not address standards of the LCP or the public access policies of the Coastal Act. This contention addresses existing conditions and does not address the proposed development. Therefore, the appellant's contention does not raise a substantial issue with respect to the standards of the LCP or the access policies of the Coastal Act.

Conclusion

The Commission finds that no substantial issues exist with respect to the approved project's conformance with the access policies of the Coastal Act or with the County's certified LCP. Therefore, appeal No. A-5-MDR-01-014 raises no substantial issue with respect to the grounds on which the appeals have been filed with regards to the access policies of the Coastal Act and conforms to the requirements of the Local Coastal Program.